

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Marjorie Surface,

Civil No. 04-3896 (MJD/SRN)

Plaintiff,

v.

ORDER

**Jo Anne B. Barnhart,
Commissioner of Social Security,**

Defendant.

Lionel H. Peabody, Esq., on behalf of Plaintiff

Lonnie F. Bryan, Assistant United States Attorney, on behalf of Defendant

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Susan Richard Nelson dated October 24, 2005. No objections have been filed to that Report and Recommendation in the time period permitted.

Based on the Report and Recommendation of the Magistrate Judge, and all of the files, records and proceedings herein,

IT IS HEREBY ORDERED that:

1. Plaintiff's Motion for Summary Judgment (Doc. No. 19) is **GRANTED** to the extent it seeks that the Commissioner's decision be reversed and remanded for further administrative proceedings consistent with the Magistrate Judge's Report and Recommendation;
2. Defendant's Motion for Summary Judgment (Doc. No. 24) is **DENIED**; and
3. Plaintiff's Motion for Remand for Consideration of New and Material Evidence

(Doc. No. 28) is **DENIED**.

DATED: November 18, 2005

s / Michael J. Davis
Michael J. Davis
United States District Court Judge